

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDREW GONZALES,

Petitioner,

V.

ORANGE COUNTY SUPERIOR COURT,

Respondent.

Case No. SACV 11-0645-SVW (JEM)

ORDER SUMMARILY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

On April 26, 2011, Andrew Gonzales (“Petitioner”), a prisoner in state custody proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition”). The Petition contains a single claim – that a \$10,000 restitution fine imposed by the trial court should be stricken because there is insufficient evidence of Petitioner’s ability to pay. (See Petition at 3-4, 8-9, 11, 19.)

DISCUSSION

I. Duty to Screen

This Court has a duty to screen habeas corpus petitions. See Rules Governing § 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Rule 4 requires a district court to examine a habeas corpus petition, and if it plainly appears from the face of the petition and any annexed exhibits that the petitioner is not entitled to relief,

1 the judge shall make an order for summary dismissal of the petition. Id.; see also Local
2 Rule 72-3.2.

3 **II. The Petition Fails to State a Cognizable Claim**

4 The Petition contains a single claim challenging the trial court's imposition of a
5 \$10,000 restitution fine. (See Petition at 3-4, 8-9, 11, 19.) This claim is not cognizable on
6 federal habeas review. A federal court may entertain a habeas petition "in behalf of a
7 person in custody pursuant to the judgment of a State court only on the ground that he is in
8 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
9 2254(a). The Ninth Circuit has held that "§ 2254(a) does not confer jurisdiction over a state
10 prisoner's in-custody challenge to a restitution order imposed as part of a criminal
11 sentence." Bailey v. Hill, 599 F.3d 976, 981-82 (9th Cir. 2010); see also United States v.
12 Thiele, 314 F.3d 399, 400 (9th Cir. 2002) (claim challenging a restitution fine is not
13 cognizable basis for habeas relief because such claims do not challenge the validity or
14 duration of confinement); United States v. Kramer, 195 F.3d 1129, 1130 (9th Cir. 1999)
15 (same); Williamson v. Gregoire, 151 F.3d 1180, 1183 (9th Cir. 1998) (imposition of fine is
16 "merely a collateral consequence of conviction" and, as such, is not sufficient to establish
17 federal habeas jurisdiction).


18 Thus, Petitioner's challenge to the restitution order is not cognizable on federal
19 habeas review because it is not a claim that he is in custody in violation of federal law.
20 Because amendment would be futile, the Petition should be dismissed with prejudice.¹

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22 ¹ It is also apparent from the face of the Petition and a review of the public docket
23 that Petitioner's claim has not been adjudicated by the California Supreme Court. (See
24 Petition at 3; see also <http://appellatecases.courtinfo.ca.gov>.) Thus, the Petition also would
25 be subject to immediate dismissal without prejudice because it is wholly unexhausted. See
26 Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001); Stone v. City and County of San
27 Francisco, 968 F.2d 850, 856 (9th Cir. 1992). Petitioner also has failed to name a proper
28 respondent. The proper respondent is the warden of the state prison where Petitioner is
incarcerated or, if he has been released, his parole or probation officer. See 28 U.S.C. §
2242; see also Rumsfeld v. Padilla, 542 U.S. 426, 436 (2004); Rule 2(a) of the Rules
Governing Section 2254 Cases in the United States District Courts and the Advisory
Committee Notes thereto. Failure to name the correct respondent destroys personal
jurisdiction. See Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996). The Court

1 **ORDER**

2 ACCORDINGLY, IT IS HEREBY ORDERED that the Petition be DISMISSED with
3 prejudice.

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5 DATED: May 4, 2011

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STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

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28 need not rest its dismissal order on these grounds, however, because the Petition is subject
to dismissal with prejudice for failure to state a claim that is cognizable on federal habeas
review.